

bridging pages 30-31 of the instant specification. Support for claims 58-59 can be found in the instant specification at page 12, third through fifth paragraph.

### **ATCC Deposit**

To demonstrate full compliance with 37 C.F.R. §§ 1.803-1.809 and to satisfy the requirement of 35 U.S.C. § 112, first paragraph, Applicants assure the Examiner that ATCC Deposit No. 97304 has been deposited under the terms of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure with the following International Depository Authority: American Type Culture Collection (ATCC), 10801 University Blvd., Manassas, Virginia 20110-2209, USA. The deposit comprises a recombinant nucleic acid vector into which cDNA sequence encoding Human Chemotactic Cytokine I has been inserted. The deposit was made on September 25, 1999, as disclosed on page 7, lines 30-33 of the instant application.

In accordance with MPEP § 2410.01 and 37 C.F.R. § 1.808, assurance is hereby given that all restrictions on the availability to the public of the above nucleic acid molecule encoding Human Chemotactic Cytokine I, will be irrevocably removed upon the grant of a patent based on the captioned application, and that the deposit will be replaced if viable samples cannot be dispensed by the ATCC, except as permitted under 37 C.F.R. § 1.808(b). A copy of the contract with the ATCC for Accession Number 97304 is enclosed herewith.

### **Power of Attorney**

A change in Power of Attorney took place during the prosecution of the prior application U.S. Serial No: 08/761,289, a copy of which is attached.

### **The Restriction Requirement**

The Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-X. In response, Applicants provisionally elect, *with traverse*, Group II represented by claims 20-24 and new claims 35-59 for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final.

Applicants respectfully request that the Examiner enter the following amendments prior to examination of the captioned application.

Applicants respectfully traverse the restriction requirement as it applies to Groups I and III-X. As the Examiner points out, polynucleotides, polypeptides, antibodies, etc. are patentably distinct inventions. However, even where two patentably distinct inventions appear in a single application,



restriction remains improper unless it can be shown that the search and examination of both groups would entail a "serious burden". *See*, M.P.E.P. § 803.

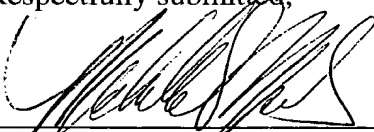
In the present situation, no such showing has been made. Indeed, no arguments have been made explaining why it would impose an undue burden to examine Groups I-X together.

Applicants submit that a search of the polypeptide claims would provide useful information for Groups I and III-X. For example, in many if not most publications, where a published polypeptide sequence, the authors also routinely include a description of the polynucleotides and antibodies. Thus, the searches for polypeptides, polynucleotides, and antibodies, etc. commonly overlap. Thus, the search and examination of a polypeptide sequence, and remaining groups would not entail a serious burden. Thus, the searches for Groups I-X would be overlapping.

Accordingly, as applied to Groups I-X, the restriction requirement should be withdrawn.

Respectfully submitted,

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